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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,805	12/08/2005	Herbert Walter	97086-00069	8217

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EXAMINER

QUINN, COLLEEN M

ART UNIT

PAPER NUMBER

3634

MAIL DATE

DELIVERY MODE

10/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/559,805

Applicant(s)

WALTER, HERBERT

Examiner

COLLEEN M. QUINN

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer (US 3,322,288) in view of Bogar, Jr. (US 4,108,313). Mayer discloses a device for detachably holding a transverse rod (1) supported by bracket arms (2a-c), attached to supporting structure (4a-c), the arms having forked shaped connection means (6a-c) comprising an adaptor (28a-c) including an arcuate cutout (shell of 30a-c), transverse to the supporting arm direction and axially to the supported rod (Figure 1), the adaptor including first and second prongs (upward pointing ends of 30a-c and 31b) directed upwards around the cutout; insert jaws (40a'-c' and 40a"-c"), made of a resilient, flexible material (Specification, column 1, line 32), the insert jaws forming a half-shell shape having an opening that extends more than halfway around the transverse rod (Specification, column 1, lines 30-36), the insert jaws having a curved inner face and outer face (Figures 1-7), first widening and then narrowing, supporting the rod in place (Specification, column 1, lines 37-51), one side of the insert jaws being more flexible than the other, moving outward in order to allow for the insertion of the rod, before moving inward again to secure the rod in place (Specification, column 1, lines 40-51, and column 3, lines 14-19), wherein the adaptor comprises a groove (34) into which a

rib (45) extends from the insert and wherein the supporting structure comprises a panel wall (front face of 4) capable of being secured to a wall in a building via vertical rails (4) and wherein the supporting arms are provided with a connecting piece (pegs at the ends of 2a-2c, as best seen in Figure 2) which is intended to be detachably fastened to the securing means. Mayer fails to disclose the adaptor to include lugs that fit into apertures on the insert.

However, Bogar, Jr. teaches a hangrod assembly (Figure 1) comprising supporting arms (18), protective inserts (52) and adaptors (46) that comprise upwardly extending prongs having lugs (54) that project from the upper ends of the prongs and inward of the adaptors and nearest the opposing prong (figure 4) and insertable into apertures (unnumbered channels in 52) arranged in the circular groove (slit running along outer surface of 52) on the insert providing a secure fit between the protective inset and adaptors for supporting a transverse rod or rod like item (Figure 1)

Therefore, it would have been obvious to one of ordinary skill in the art, to provide the device of Mayer with the lug and aperture relationship taught by Bogar, Jr., in order to provide a more secure and protective insert assembly for a hangrod assembly.

Response to Arguments

Applicant's arguments filed June 26th, 2008 have been fully considered but they are not persuasive. The applicant argues that it would be superfluous to modify the prongs of Mayer to have lugs to fit into a grooved insert. This is not persuasive since

one of ordinary skill in the art would recognize that by providing the insert of Mayer with an elongate groove and the prongs of Mayer with lugs at the end of the prongs for locking into the insert groove the fitted relationship between the prongs and insert member would only be more secure and would still provide a supportive arm end for a transverse rod.

The applicant suggests that the flanges/lugs (54) of Bogar cannot be considered lugs. However, the examiner would like to point out that a "lug" is defined as "a *projecting piece by which anything is held or supported*" (*The Random House College Dictionary*) and the flange elements (54) of Bogar are certainly projecting from the upwardly extending prongs (46) of and supporting the insert member 52.

The applicant argues that the opening 42 of Mayer does not terminate "adjacent the upper ends" of the insert. The examiner would like to point out that "adjacent" is a very broad term and that simply means *close to* or *nearby*. Since the opening 42 of Mayer is in the middle portion of the insert and is between both ends of the inset is certainly considered to be close to, nearby and adjacent the ends of the insert. "Adjacent" does not require absolute contact, but requires relatively close position. -- Ex parte Hadsel (PO BdApp) 109 USPQ 509. »Adjacent" is broader than side by side. -- Ex parte Appeldorn & Gilkeson (PTO BdApp) 159 USPQ 791.

In response to applicant's argument that it would be superfluous to combine the elements of Mayer and Bogar, Jr. and that certain parts are longer than others and wouldn't fit, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it

that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this instant case it would be obvious to one of ordinary skill in art to incorporate a lug and groove connection between mating members in order to more securely fit the members together. Additionally, at the time of the invention, one of ordinary skill in the art would have good reason to pursue the known options within his or her technical grasp, as the selected option was one of a finite number of available mating relationships between two elements fitted together. Such a combination, to one of ordinary skill in the art, would have a reasonable expectation of success, and would be based on ordinary skill and common sense at the time the invention was made.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLLEEN M. QUINN whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/
Supervisory Patent Examiner, Art Unit 3634

/C. M. Q./
Examiner, Art Unit 3634

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